IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY DAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.20233 of 1996

Between:

1 D. Narasaiah (died) S/o Sailoo,
R/o Saligudem Medchal (M),
R.R.Dist.
2 Shantamma, W/o D. Narasaiah,
R/o Saligudem Medchal (M), R.R.dist
3 D. Yadgiri S/o D. Narasaiah,
R/o Saligudem Medchal (M), R.R.dist
4 D. Ramulu, S/o D. Narasaiah,
R/o Saligudem Medchal (M), R.R.dist
5 D. Anjaneyulu, S/o D. Narasaiah,
R/o Saligudem Medchal (M), R.R.district

(Petitioners 2 to 5 are brought on records as

LRs of deceased petitioner No.1 as per

Court order dt:22.10.98 in WPMP.No.32793/98)

..... PETITIONERS

AND

1 The Divisional Engineer, Operation,
APSEB., Secunderabad Division,
Secunderabad.
2 Superintending Engineer
O/o Superintending Engineer,

Operation Circle, Secunderabad,
Mint Compound Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring (1) Regulation 28(3) of the A.P.S.E.B. Service Regulations as illegal and unconstitutional and (2) the impugned proceedings No.SE/Sec'bad/F.264 Adm./ D.No.97/95, dated 31.5.95 as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner into service or treat him as in service upto 31-5-95 with all consequential benefits.

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondent No.: (SC FOR A.P.S.E.B.)

The Court made the following :

JUDGMENT:

This writ petition is filed to declare Regulation 28(3) of the Andhra Pradesh State Electricity Board (Service) Regulations (for short 'the Regulations') as illegal and unconstitutional and the Proceedings No.SE/Sec'bad/Adm/F.264/ D.No.197/95, dated 31-5-1995 of the 2nd respondent as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that he was appointed as a Helper in the respondent-Board with effect from 21-8-1965. After completion of 10 years of service, he was given a special grade in the scale of Rs.420-10-440-15-635 with effect from 1-4-1981. Subsequently, he was also promoted as Assistant Lineman with effect from 19-9-1984, which post was redesignated as Assistant Wireman in pursuance of B.P.Ms.No.709, dated 12-7-1984. He had been discharging his duties to the satisfaction of his superiors without any blemish. However, while working as Assistant Wireman in the year 1992, he fell sick very seriously and was taken to a local private physician. Since his family members were in tension, they could not give any leave application within reasonable time. The Medical Officer diagnosed the disease as Hepatitis and Arthritis. He was advised to take rest. Since his family members are illiterate, they do not have any idea to give any leave application. After recovery from illness, he reported for duty. Then, he was issued with a charge sheet dated 14-9-1994 alleging that he was unauthorizedly absent with effect from 23-11-1992. He submitted his explanation to the charge sheet on 10-10-1994. However, a farce of enquiry was conducted and basing on the findings of the Enquiry Officer, the Superintending Engineer – 2nd respondent herein - issued a show cause notice

dated 16-12-1994 asking him to explain as to why his absence should not be treated as resignation from service with effect from 23-11-1992 and ceased to be in Board's Employment with effect from 23-11-1992 under Regulation 28(3) of the Regulations. He submitted his explanation for the same stating that he took treatment from a local clinic and nursing home, his family members being illiterate, in view of his serious condition, no proper leave application was submitted, due to his ill-luck, his health could not be improved, the physicians were not able to diagnose the disease properly and the imposition of punishment of deemed resignation from service was very harsh and the same is not proportionate to that of the misconduct alleged against him. However, the impugned Proceedings dated 31-5-1995 were passed invoking the provisions of Regulation 28(3) of the Regulations i.e. he is deemed to have resigned from service with effect from 23-11-1992.

Learned counsel for the respondents, though no counter is filed, argued that the Regulation 28(3) of the Regulations has already been upheld by this Court in earlier proceedings. Therefore, that question need not be gone into. Even the learned counsel for the petitioner also conceded that there is no necessity to go into the validity of Regulation 28(3) of the Regulations.

Now the only question that falls for consideration is whether the services of the petitioner could have been terminated by invoking Regulation 28(3) of the Regulations even after conducting a detailed enquiry into the misconduct of absenteeism alleged against the petitioner.

Learned counsel for the petitioner submits that assuming that Regulation 28(3) of the Regulations is there on the statute book; that itself does not mean that the respondents could have invoked the said provision while alleging certain misconduct against the petitioner, having conducted a detailed inquiry into the matter. Learned counsel for the respondents contends that whether an enquiry is conducted or not is immaterial and the respondents are not prevented from invoking Regulation 28(3) of the Regulations in such cases.

I have given my earnest consideration to the submissions made by the learned counsel for the parties and gone through the entire material made available on record.

At the outset, it may be noticed that the petitioner died during the pendency of this writ petition and petitioners 2 to 5 were brought on record as legal

representatives of the deceased 1st petitioner as per the orders of the Court dated 22-10-1998 in W.P.M.P.No.32793 of 1998.

Admittedly, this is a case where the disciplinary proceedings started with the issuance of charge sheet, conducting of a detailed enquiry, submitting of report by the Enquiry Officer and issuance of show cause notice. While issuing show cause notice by the disciplinary authority stating that the petitioner is held to be guilty of the charges, did not give any finding as to the punishment. But, in view of the tentative conclusions it has reached the disciplinary authority thought of invoking Regulation 28(3) of the Regulations also in the very same show cause notice. Till submitting the explanation, the punishment as per the findings in the disciplinary authority, was not decided. In the guise of the findings, the disciplinary authority invoked Regulation 28(3) and got rid of the services of the petitioner. Thus, it must be deemed that the disciplinary proceedings against the petitioner did not attain finality. At the show cause notice stage itself, probably the disciplinary authority thought it difficult to decide any punishment and invoked Regulation 28(3). It is not a case where the disciplinary authority imposed punishment of dismissal and also invoked the provisions of Regulation 28(3). The disciplinary proceedings initiated against the petitioner, thus, did not attain finality. They were abandoned in the middle. I am in complete agreement with the arguments advanced by the learned counsel for the petitioner that having abandoned the disciplinary proceedings in the middle, the respondents ought not to have invoked Regulation 28(3) of the Regulations. In this regard, the learned counsel for the petitioner relied upon a reported Judgment of a Division Bench of this Court in **MOHD.ABDUL KHADAR v. APSRTC**. That is also` a case where A.P. State Road Transport Corporation invoked an analogous provision i.e. Regulation 39(3) of the APSRTC Employees (Leave) Regulations, 1963, which reads as under:

> "A non-permanent employee who remains absent for a period exceeding the maximum period for which extraordinary leave may be granted under this Regulation, shall be deemed to have resigned his appointment and cease to be in service."

and dispensed with the services of the petitioner therein stating that the petitioner therein deemed to have resigned from service and ceased to be in service. While examining the said provision, this Court held that the termination of services of the

petitioner therein amounts to retrenchment and for failure to comply with the requirements of Section 25-F of the Act such termination orders cannot be sustained and thus impugned orders therein were quashed. Paragraphs 9 to 12 of the said Judgment read as under:

> "**9.** Notwithstanding the above judgment, a Full Bench of the Kerala High Court in *L. Robert D'Souza v Executive Engineer, Southern Railways* (1979(1) Lab LJ 311) struck a different note purporting to follow the earlier decision of the Supreme Court in *Hariprasad Shivashankar Shukla V. A.D. Divelkar* (AIR 1957 SC 121). The Supreme Court in *Santhosh Gupta Vs. State Bank of Patiala* (AIR 1980 SC 1219) after referring to its earlier decisions in *Hindustan Steel Limited v. The Presiding Officer, Labour Court* (AIR 1977 SC 31) and the *State Bank of India Vs. N. Sundara Money* (AIR 1976 SC 1111) stated that these decisions have properly explained Shukla's case and laid down the correct law. In that view, the Supreme Court over-ruled the decision of the Kerala High Court in *L. Robert D'Souza v Executive Engineer, Southern Railways* and the decisions of the other High Courts viz., *The Managing Director, National Garage V. J. Gonsalve* (1962(1) LLJ 56), *Goodlass Narolac Paints Vs. Chief Commissioner (*1967(1) LLJ 545 Punjab) and *Delhi & Rajasthan State Electricity Board v. Labour Court* (1966(1) LLJ 381) and reiterated that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed, was 'retrenchment' within the meaning of Section 2(oo) and therefore, the requirements of Section 25F had to be complied with. In that view, the Supreme Court set aside the order of the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, New Delhi and directed reinstatement of the workman with full back wagtes.
>
> **10.** A similar view was taken by the Supreme Court in *L. Robert D'Souza v Executive Engineer, Southern Railways* which laid down the broad principle in the following words.
>
> > 'If termination of service of a workman is, brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories, the termination of service, even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment.'

It may be noticed that this was an appeal preferred against the judgment of the Kerala High Court in *L. Robert D'Souza v Executive Engineer, Southern Railways* referred to above. In this case, the Supreme Court had specifically considered the rule which provided for automatic termination of service for overstay after the expiry of leave. The order notifying the cessation in that case read as follows:

"You have absented yourself unauthorizedly from 18-9-1974 and hence your services are deemed to have been terminated from the day you have absented yourself. Please note. Since you are no longer on the rolls of this office, you should vacate the quarters allotted to you immediately failing which action will be taken to evict you."

11. Mr. Prakash Rao, the learned Standing Counsel for the A.P. State Road Transport corporation, however, notwithstanding the above position of law declared by the Supreme Court, which is binding on us, contended that a Bench of this Court in Writ Appeal No.10/78, dt.13-1-1978 confirmed the judgment of a single Judge and held that the termination in such circumstances does not amount to retrenchment and, therefore, valid. We may point out that another Division Bench of this Court in W.A.No.163/81 by a judgment dated 3-8-1983, however, took the view that it amounts to terminating the service on the ground of misconduct and the procedure prescribed by the Regulations must be followed. But having regard to the pronouncement of the Supreme Court with which we find ourselves in agreement which is binding on us, we must hold that the termination of theservices of the petitioners herein for overstay on expiry of leave amounts to retrenchment and as admittedly neither the requirements of Section 25F have been fulfilled by the Management nor any enquiry whatsoever was held to justify the action of the termination on the ground of misconduct, the impugned orders must be quashed.

12. Mr. Prakasha Rao, the learned Standing Counsel for the Corporation, however, on the strength of the observations made in the judgment of the Kerala High Court in H.M.T.Limited Kalamassery vs. the Labour Court, Ernakulam (1983(1) SLJ 20) stated that the view expressed by the Supreme Court in *L. Robert D'Souza v Executive Engineer, Southern Railways* has now been referred to a larger Bench and, therefore, we may await the decision of the larger Bench of the Supreme Court. Such a representation did not find favour with the Kerala High Court and in our opinion rightly so. Merely because a particular view taken by the Supreme Court which constitutes the law of the land is sought to be examined in some later cases and the same is referred to a larger Bench, the law as laid down does not cease to be binding on this Court. In view of the law of the land as it stands declared in *L. Robert D'Souza v Executive Engineer, Southern Railways* we must hold that the termination of the services of the petitioners in these cases constitutes retrenchment and for failure to comply with the requirements of Section 25F of the Industrial Disputes Act such termination orders cannot be sustained. The impugned orders are accordingly quashed and the writ petitions are allowed, but in the circumstances, without costs."

Learned counsel for the petitioner also relied upon another Division Bench Judgment reported in **CHIEF ENGINEER, A.P.S.E.B. v. K.NAGA HEMA** wherein it was held as under:

"**3.** The fallacy, however, in the stand of the Board starts from its case that the service of the husband of the writ petitioner stood automatically terminated for his long unauthorized absence from duty. Allegation that some one is absent without any grant of leave by the competent authority, is obviously an allegation leading to a charge of misconduct on the part of the employee. When such a charge is levelled

against the employee, it is imperative the employer is duty bound to hold enquiry into the alleged misconduct before making any order of removal from service, which in very sense, will be an order imposing a major punishment. The view which several High Courts expressed and applied in different parts of the country, notwithstanding the rules or certified standing orders providing for such automatic cessation of contract of service, has now been expressed by the Supreme Court in the case of *D.K.Yadav v. J.M.A.Industries Ltd.* {1993(3) SCC 259} in the case of a private employer, wherein it is stated, principles of natural justice and duty to act in just, fair and reasonable manner must be read into the standing orders and notwithstanding the order which provided for automatic cessation of contract of service, the court has directed that such order to terminate the service can be made only after an enquiry, otherwise it will be violative of Articles 14, 16(1) and 21 of the Constitution of India."

In *D.K.Yadav v. J.M.A.Industries Ltd.* which was relied upon by a Division Bench of this Court in the above case, held as under:

"7. The principal question is whether the impugned action is violative of principles of natural justice. In *A.K. Kraipak* v. *Union of India* a Constitution Bench of this Court held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in *Col. J.N. Sinha* v. *Union of India*. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice by necessary implication from specific provisions in the Act like Sections 25-F; 25-FF; 25-FFF etc. The need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service is completed, the need to dispense with the services may arise. In that situation, on compliance with the provisions of Section 25-F resort could be had to retrench the employees in conformity therewith. Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

10. In *State of W.B.* v. *Anwar Ali Sarkar* per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi* v. *Union of India* another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the

power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

From a reading of the above decisions, it is clear that any misconduct alleged against an employee must be enquired into and it should reach finality. In this case, admittedly, though a finding is reached, the punishment was not proposed for the misconduct proved. Therefore, the proceedings have not attained finality. Had the disciplinary proceedings been completed, probably the writ petitioner (since died) was entitled for being considered for lesser punishment as per the Regulations of the Board in view of his long and unblemished service. In the impugned order, it is not clear as to whether invocation of Regulation 28(3) is also one of the punishments contemplated under the Service Regulations of the respondent-Board for the misconduct proved against the writ petitioner. Admittedly, this is not so. For the misconduct proved, the management is supposed to invoke any of the punishments as contemplated under the Regulations. Since such a course of action was not adopted, it can be presumed that the disciplinary proceedings have not attained finality. In substance, there was no enquiry at all. Invoking Regulation 28(3)

of the Regulations is altogether a different circumstance. Either the management could have invoked Regulation 28(3) of the Regulations or they could have completed the disciplinary proceedings by way of imposing punishment on the basis of the findings in the enquiry conducted by them. In fact, the very show cause notice itself is vindictive since the authorities could not have invoked Regulation 28(3) at that stage of the proceedings. That means, the management somehow wanted to dispense with the services of the writ petitioner without giving finality to the disciplinary proceedings. There the management has committed an error making the enquiry conducted by it nugatory. Under these circumstances, the decisions relied upon by the learned counsel for the petitioner squarely applies to the facts of this case. Merely because a provision is available on the statute book or Certified Standing Orders, that does not mean that the authorities can give a go-bye to the enquiry conducted and just invoke the provisions of the Certified Standing Orders as to deeming resignation from employment. Even otherwise, assuming that such a power is vested in the disciplinary authority to invoke Regulation 28(3) of the Regulations even at the end of the disciplinary proceedings and without giving any finding as to punishment, this Court is of the considered opinion that the punishment of deemed resignation from service is disproportionate to that of the misconduct alleged against the writ petitioner, who had put in long and unblemished service. It is not the case of the respondents that the writ petitioner had suffered any punishment earlier for any misconduct.

However, this is a case of admitted absenteeism on the part of the writ petitioner due to his ill-health. Ultimately, the writ petitioner passed away. Therefore, permitting the respondents to conduct any enquiry into the matter would be futile. In the facts and circumstances of the case, this Court is of the considered opinion that the respondents shall treat the writ petitioner to have compulsorily retired from service with effect from 31-5-1995.

Accordingly, the impugned orders are set aside and the respondents are directed to calculate all the dues payable to the writ petitioner as if he had retired compulsorily from service with effect from 31-3-1995 and pay the same to petitioners 2 to 5, within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

-4-2005

prk

That the Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Thursday, the twenty first day of April Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Divisional Engineer, Operation,
APSEB, Secunderabad Division,
Secunderabad.
2 Superintending Engineer
Office of the Superintending Engineer,

Operation Circle, Secunderabad,
Mint Compound, Hyderabad.

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